
By: **Delegates Kelley, Gaines, Gutierrez, Patterson, and V. Turner**
Introduced and read first time: February 12, 2004
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Prohibition Against Death Sentence After**
3 **Prosecutorial Misconduct**

4 FOR the purpose of prohibiting a certain defendant from being sentenced to death
5 when the defendant's conviction involving a certain case was previously
6 reversed by the Court of Appeals and the Court made a finding of prosecutorial
7 misconduct; providing for the application of this Act; and generally relating to a
8 prohibition against a death sentence after a reversal and a finding of
9 prosecutorial misconduct.

10 BY repealing and reenacting, with amendments,
11 Article - Criminal Law
12 Section 2-202
13 Annotated Code of Maryland
14 (2002 Volume and 2003 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
16 MARYLAND, That the Laws of Maryland read as follows:

17 **Article - Criminal Law**

18 2-202.

19 (a) A defendant found guilty of murder in the first degree may be sentenced to
20 death only if:

21 (1) at least 30 days before trial, the State gave written notice to the
22 defendant of:

23 (i) the State's intention to seek a sentence of death; and

24 (ii) each aggravating circumstance on which the State intends to
25 rely;

26 (2) (i) with respect to § 2-303(g) of this title, except for § 2-303(g)(1)(i)
27 and (vii) of this title, the defendant was a principal in the first degree; or

1 (ii) with respect to § 2-303(g)(1)(i) of this title, a law enforcement
2 officer, as defined in § 2-303(a) of this title, was murdered and the defendant was:

3 1. a principal in the first degree; or

4 2. a principal in the second degree who:

5 A. willfully, deliberately, and with premeditation intended
6 the death of the law enforcement officer;

7 B. was a major participant in the murder; and

8 C. was actually present at the time and place of the murder;
9 and

10 (3) the sentence of death is imposed in accordance with § 2-303 of this
11 title.

12 (b) (1) In this subsection, a defendant is "mentally retarded" if:

13 (i) the defendant had significantly below average intellectual
14 functioning, as shown by an intelligence quotient of 70 or below on an individually
15 administered intelligence quotient test and an impairment in adaptive behavior; and

16 (ii) the mental retardation was manifested before the age of 22
17 years.

18 (2) A defendant may not be sentenced to death, but shall be sentenced to
19 imprisonment for life without the possibility of parole subject to the requirements of §
20 2-203(1) of this subtitle or imprisonment for life, if the defendant:

21 (i) was under the age of 18 years at the time of the murder; or

22 (ii) proves by a preponderance of the evidence that at the time of
23 the murder the defendant was mentally retarded.

24 (C) A DEFENDANT MAY NOT BE SENTENCED TO DEATH, BUT SHALL BE
25 SENTENCED TO IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE
26 SUBJECT TO THE REQUIREMENTS OF § 2-203(1) OF THIS SUBTITLE OR
27 IMPRISONMENT FOR LIFE, IF:

28 (1) THE DEFENDANT'S CONVICTION WAS PREVIOUSLY REVERSED ON AN
29 APPEAL TO THE COURT OF APPEALS INVOLVING A CASE IN WHICH THE STATE
30 PREVIOUSLY FILED A NOTICE OF INTENTION TO SEEK A SENTENCE OF DEATH; AND

31 (2) THE COURT OF APPEALS MADE A FINDING OF PROSECUTORIAL
32 MISCONDUCT IN THE CASE, INCLUDING, BUT NOT LIMITED TO, A VIOLATION OF THE
33 PROSECUTOR'S DUTY TO DISCLOSE MATERIAL OR INFORMATION TENDING TO
34 NEGATE OR MITIGATE THE GUILT OR PUNISHMENT OF THE DEFENDANT AS TO THE
35 OFFENSE CHARGED.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
2 construed to apply only prospectively and may not be applied or interpreted to have
3 any effect on or application to any defendant sentenced before the effective date of
4 this Act.

5 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2004.